

**Operating Procedure for Franklin Division of the Probate and Family Court
Under Standing Order 1 – 21, effective July 12, 2021**

A. General information:

Effective July 12, 2021, the Probate and Family Court will be open to conduct all emergency and non-emergency court business in person, except for the matters identified in Paragraph C below and any matter that a judge determines shall be held virtually.

The ability to conduct in-person hearings depends upon successful compliance with all safety protocols established by the Trial Court, including, but not limited to, Trial Court occupancy limits.

Parties may file pleadings by US mail, in person, or by e-filing where available. Email filings will be accepted when done so by a Court Service Center staff member or by an attorney volunteering through a Lawyer for the Day program on behalf of a self-represented litigant or if specifically authorized by the Supreme Judicial Court or the Executive Office of the Trial Court. Other email filings may be allowed at the discretion of each Register of Probate. Drop boxes may be available to file pleadings in some court locations.

Email pleadings, outside of those noted above, are generally not accepted. Under very limited (emergency) circumstances the court may accept certain types of pleadings by email and only as detailed in the email policy attached to this protocol. All requests to file documents by email should be sent to franklinprobate@jud.state.ma.us. The applicant should specify how the documents qualify for email filing under the protocol. Questions related to the Franklin Division email policy may be sent to franklinprobate@jud.state.ma.us or directed to the Registry of Probate at (413) 775-7464.

The Franklin Division has a non-secure drop box in the lobby of the courthouse. Any litigant or attorney may leave documents in the drop box, bearing in mind that the drop box is not secured or monitored. Documents left in the drop box are retrieved daily. Questions related to the drop box may be directed to Brennan McGuane at 413-775-7460 or brennan.mcguane@jud.state.ma.us.

Electronic signatures will continue to be used, consistent with the current order of the Supreme Judicial Court, unless and until otherwise amended by subsequent orders or rules.

Virtual registries may continue to be used. Virtual registries offer all of the assistance normally available during an in-person visit, including face-to-face contact, the ability to obtain and get assistance with court forms, and access to court documents and docket information. [Information about virtual registries can be found here.](#)

The virtual registry hours are Monday through Friday, 9 am – 11 am and 2 pm – 4 pm. The Zoom link is www.zoomgov.com/j/1604800378. Parties can go to zoomgov.com and enter Meeting ID 160 480 0378. Questions related to the virtual registry may be directed to Brennan McGuane at 413-775-7460 or franklinprobate@jud.state.ma.us.

B. In-Person Proceedings:

As of July 12, 2021, the Probate and Family Court will expand the scheduling of in-person hearings for all matters, except for the matters identified in Paragraph C below and any matter that a judge determines shall be held virtually. In-person hearings will be scheduled for the next available date and will be conducted on a staggered schedule.

Most matters will be scheduled at 8:30 or 10:00, except as otherwise ordered. Cases where not all parties are represented by counsel will have a dispute intervention prior to hearing. If all parties are represented by counsel, matters will be heard at twenty or thirty minute intervals, depending on the type of case.

Beginning on January 1, 2022, all proceedings will be scheduled as follows:

TRIAL DAY

(typically Fridays or the 3rd and 4th Wednesday of the month)

8:30am	virtual events
9:00am	In-person trial(s)

VIRTUAL DAY

(typically 1st Wednesday of each month)

9:00-12:20	uncontested virtual events at 20 min intervals
2:00pm	virtual or in person events

MOTION DAY

(most Thursdays)

8:30am	events to be scheduled
8:30am	motions
9:00am	motions
10:00am	motions
2:00pm	virtual or in person events

PRETRIAL DAY

(most Tuesdays - PM drug court) (pretrials and status conferences)

8:30am	events to be scheduled
8:30am	in-person (PO) pretrials
	in-person (courtroom)
9:00am	pretrials
10:00am	in-person (PO) pretrials
	(NOTE: the judge needs to finish by 12:30 for drug court)

CONTEMPT DAY

(typically 2nd Wednesday of each month)

8:30am	in-person contempt (or related events)
10:00am	in-person contempt (or related events)
2:00pm	virtual or in person events

(Please Note: the judge spends Mondays in Hampshire County)

For additional details regarding in-person hearings and scheduling, please consult the Franklin Protocols Effective July 12, 2021.

Questions related to scheduling may be directed to JCM Alexa Flanders at (413) 775-7469 or alexandra.flanders@jud.state.ma.us or to AJCM Anne Fitzgerald at c.anne.fitzgerald@jud.state.ma.us or at (413) 775-7472.

If notice has already gone out and a matter is scheduled for a virtual hearing on or after July 12, 2021, the matter will still be held virtually unless the assigned judge determines the matter should be heard in person and the parties are notified of such change.

Where an in-person hearing is scheduled, a party may request that the hearing be conducted virtually, and the judge will rule on the request.

Please consult the Franklin Protocols Effective July 12, 2021 and the latest order to determine whether the court will hold the hearing in question virtually or in person. If an in-person hearing is scheduled, a party or attorney must file a motion to request that the event be converted to a virtual hearing. If the moving party seeks to have the entire in-person proceeding converted to a virtual event (or vice versa), not just his or her appearance, the motion must be scheduled with notice to all other parties, unless it is assented to. Any request to convert the in-person or virtual status of a trial must be by motion, scheduled with notice.

Questions related to in-person/virtual hearing requests may be directed to JCM Alexa Flanders at (413) 775-7469 or alexandra.flanders@jud.state.ma.us or to AJCM Anne Fitzgerald at c.anne.fitzgerald@jud.state.ma.us or at (413) 775-7472.

Alternatively, a judge, upon request, may authorize a participant (an attorney, party, or witness) to appear virtually while other participants appear in person, so long as it is consistent with due

process and fundamental fairness. A participant who requests to appear virtually for an otherwise in-person proceeding shall have no grounds to object to other participants appearing in person.

Please consult the Franklin Protocols Effective July 12, 2021 and the latest order to determine whether the court will hold the hearing in question virtually or in person. If a party seeks to appear virtually at an in person hearing other than a trial (or to appear in person at a matter scheduled virtually), that party must file a motion which will be reviewed administratively. However, if an in-person trial is scheduled and a party, attorney or witness seeks to participate virtually, the motion must be scheduled for hearing with proper notice.

Questions related to in-person/virtual hearing requests may be directed to JCM Alexa Flanders at (413) 775-7469 or alexandra.flanders@jud.state.ma.us or to AJCM Anne Fitzgerald at c.anne.fitzgerald@jud.state.ma.us or at (413) 775-7472.

C. Virtual Proceedings:

The following matters shall be held virtually and on a staggered schedule:

1. Uncontested adoptions, unless the assigned judge determines that the matter should be heard in person;
2. Uncontested divorces;
3. Rogers reviews;
4. Best efforts § 29B annual reviews – DCF custody;
5. Any action involving child support only, except for contempt actions;
6. Case Management/Status conferences; and
7. Discovery motions.

The above actions, including matters scheduled on the DOR block day, will be scheduled by the court at intervals. A scheduling order or notice will specify the time and method of the hearing.

Please refer to the staggered schedule in Section B, above, for specific time-blocks in which virtual matters will be heard.

Questions related to scheduling may be directed to JCM Alexa Flanders at (413) 775-7469 or alexandra.flanders@jud.state.ma.us or to AJCM Anne Fitzgerald at c.anne.fitzgerald@jud.state.ma.us or at (413) 775-7472.

Matters that are generally handled administratively (e.g., marriage without delay; joint modification); uncontested/assented to motions (e.g., appointment of GAL; continue date of hearing; file marriage certificate late); and uncontested/routine allowables in probate actions (e.g., informal petition; transfer of guardianship or conservatorship from another state; accounts; appointment of GAL; license to sell; alternative service; waiver of sureties; motion to file death certificate late) will continue to be handled administratively. If such a matter is not handled administratively, a virtual hearing will be scheduled.

In the absence of exceptional circumstances, as determined by the judge conducting the hearing, no party or attorney for a party may be physically present in the courtroom for a scheduled virtual hearing.

However, in cases with one or more self-represented litigants, judges shall consider the possibility that self-represented litigants may have limited access to the technology needed or limited experience with such technology and either assist the self-represented litigant or offer the option to appear in person.

A judge may also consider matters through an administrative review process and determine motions in accordance with Rule 78.

Please refer to the attached protocol for domestic relations matters that may be handled administratively. Additional administrative matters include routine probate matters and uncontested annual Rogers reviews.

Questions related to administrative allowances may be directed to JCM Alexa Flanders at (413) 775-7469 or alexandra.flanders@jud.state.ma.us or to AJCM Anne Fitzgerald at c.anne.fitzgerald@jud.state.ma.us or at (413) 775-7472.

D. Protocol in the event of a court closure by the Trial Court:

If the Franklin County Justice Center is temporarily closed due to COVID19, no scheduled nonemergency hearings will take place. Prior to any scheduled hearing, all parties are encouraged to check the status of the Franklin County Justice Center by visiting www.mass.gov/info-details/temporarycourt-closures-due-to-covid-19. Cases not heard due to closure will be rescheduled by the court.

During closure of the Justice Center, only emergency matters will be addressed. If an emergency arises during any closure, please contact the court at franklinprobate@jud.state.ma.us or 413 775 -7464.

Direct questions to franklinprobate@jud.state.ma.us or 413 775 -7464; questions will be answered by the office manager Brennan McGuane or his designee or by the JCM or AJCM.

E. Contact Information:

Emergency phone number	(413) 775-7464	
Emergency email address	franklinprobate@jud.state.ma.us	
Registry phone number	(413) 775-7464	
Probation contact	Margaret Mercier	franklinprobate@jud.state.ma.us (413) 775-7452
Judicial Case Manager	Alexa Flanders	alexandra.flanders@jud.state.ma.us (413) 775-7469

Assistant Judicial Case Manager	Anne Fitzgerald	c.anne.fitzgerald@jud.state.ma.us (413) 775-7472
Sessions Clerk	n/a	Direct inquiries to Anne Fitzgerald – see above

F. Additional Information:

FRANKLIN DIVISION POLICY REGARDING EMAIL FILING

To: All court users
Effective date: July 12, 2021

Standing Order 1-21, which takes effect on July 12, 2021, provides that pleadings may be filed by US mail, in person, or by e-filing where available. It further provides that email filings will be accepted when done so by a Court Service Center staff member or by an attorney volunteering through a Lawyer for the Day program on behalf of a self-represented litigant or if specifically authorized by the Supreme Judicial Court or the Executive Office of the Trial Court. The order notes that other email filings may be allowed at the discretion of each Register of Probate.

Therefore, in order to promote the orderly, efficient and secure processing of pleadings and to ensure the integrity of the record while providing access to justice, the following policy shall govern email filings in this division:

- In addition to the pleadings designated in the standing order, the Register of Probate or his designee shall only accept pleadings for filing by email in the following circumstances:
 - A. exigent circumstances exist related to the health, safety or welfare of a party or child as determined by the Register of Probate or his designee;
 - B. filing by mail or in person is not feasible as determined by the Register of Probate or his designee; and
 - C. the documents cannot be e-filed.
- If the above circumstances have been met, the Register of Probate or his designee shall only accept pleadings by email in the following categories:

1. complaints and/or motions related to custody or parenting time;
 2. petitions for guardianship of a minor with an accompanying motion for the appointment of a temporary guardian; or
 3. applications for abuse prevention orders or other protective order.
- If a motion for short order of notice has been granted, an appearance of counsel and/or any opposition to the motion may be accepted by email if circumstances B and C above apply.
 - The court will continue to accept joint motions to continue by email as it has been the long-standing practice of this division to permit joint motions to continue to be filed by fax and filing by email is more secure and reliable than by fax.
 - The judge may order, either orally or in a written order, a pleading to be filed by email and, if so, you should do so in the manner you were directed.

If possible, filing by mail, hand delivery or e-file is the preferred method of filing. Any request to file by email should be directed to franklinprobate@jud.state.ma.us and the subject line should include "request to file by email."

Once you have filed using any one method (mail, hand deliver, e-filing, or, if authorized, email), do not file the same documents again by filing in another manner.

All filers should note that e-filed documents can take up to 3-6 business hours to process and may not be immediately available to the judge; please plan accordingly.

John Merrigan, Register of Probate

FRANKLIN PROTOCOLS EFFECTIVE JULY 12, 2021

Updated as of July 13, 2021

In response to Standing Order 1-21, the Franklin Division has adopted the following protocols.

Trials and evidentiary hearings

Trials and evidentiary hearings will primarily be conducted in person, unless specifically authorized to be by Zoom. Any request for a virtual hearing or to permit a witness to testify remotely must be raised prior to the trial or hearing date (by motion, or by discussion at a Pre-Trial or Status Conference).

Abuse Prevention hearings

209A hearings will be in person or by Zoom as specified in the last order; however, if there is no type of hearing specified, the parties need to appear **in person**.

Pre-Trial Conferences

Per the standing order, if notice has already gone out scheduling a matter for a virtual hearing, the matter will still be held virtually unless ordered otherwise. In this division, all Pre-Trial Conferences will take place by Zoom **through the month of September** (if both parties are not represented by counsel, the matter begins with a dispute intervention with probation, conducted by telephone). The order scheduling the matter for a Pre-Trial Conference should indicate that it will be held remotely.

Beginning October 1, 2021 all Pre-Trial Conferences will be in person (unless ordered in writing to be by Zoom).

Pre-Trial Conferences are scheduled at half-hour intervals for cases where both parties are represented by counsel. For cases where at least one party is self-represented, Pre-Trial Conferences will be scheduled at 8:30 a.m. and at 10:00 a.m. Probation will conduct dispute interventions and then present the cases as they are ready.

Case Management Conferences

CMCs will remain remote. The JCM and AJCM conduct CMCs by phone using the court's conference line or by Zoom. Probation conducts CMCs by phone by placing calls to parties. Parties will receive a scheduling order telling them how to participate in their CMC.

Motions

Motion sessions will be in-person commencing **August 1, 2021**.

Motions are scheduled at 8:30 a.m. and at 10:00 a.m. The court will be adopting auto-scheduling, at which time cases where both parties are represented by counsel will be scheduled at twenty minute intervals. For cases where at least one party is self-represented, Probation will conduct dispute interventions and then present the cases as they are ready.

Contempts

Beginning with the contempt session scheduled on **August 20, 2021**, contempts will be heard in person and litigants and counsel will be required to appear at court for the hearing.

Contempt hearings are scheduled at 8:30 a.m. and at 10:00 a.m. For cases where at least one party is self-represented, Probation will conduct dispute interventions and then present the cases as they are ready.

Uncontested divorces

These hearings will largely remain remote. The scheduling order will specify a remote or in-person hearing.

DOR session

For the time being this session will remain remote. DOR provides notice to litigants with Zoom information.

Uncontested conservatorship and adult guardianship hearings

These hearings (except for annual Rogers reviews) will be in-person beginning August 1, 2021, unless the judge allows a motion for a virtual hearing. Uncontested hearings are typically scheduled on motion days in the afternoon. Petitioners should contact the Registry of Probate at (413) 775-7464 or franklinprobate@jud.state.ma.us to identify available hearing dates.

Requests for virtual hearings

If an in-person hearing is scheduled, a party or attorney must file a motion to request that the event be converted to a virtual hearing. If the moving party seeks to have the entire in-person proceeding converted to a virtual event (or vice versa), not just his or her appearance, the motion must be scheduled with notice to all other parties, unless it is assented to (in which case the motion will be reviewed administratively). The motion should include the basis for the request.

Any request to convert the in-person or virtual status of a trial must be scheduled for a hearing with proper notice to all parties.

If a party seeks to appear virtually at an in-person hearing other than a trial (or to appear in person at a matter scheduled virtually), that party must file a motion (with a copy to the other parties) which will be reviewed administratively. However, if an in-person trial is scheduled and a party, attorney or witness seeks to participate virtually, the motion must be scheduled for hearing with proper notice.

FRANKLIN PROBATE AND FAMILY COURT

Domestic Relations Motions That May Be Allowed Administratively (Without Hearing)

The following motions may be allowed without the assent of the other party/parties:

Type of Motion	Does the motion need to be mailed to other party/parties?
• Motion to impound address	No
• Motion to impound document(s) or entire file	Yes
• Motion to file birth or marriage certificate late	Yes
• Motion for alternate service/service by publication	No
• Motion for additional time for service/to issue new summons	No
• Motion for return of original documents	No
• Motion for short order of notice/ex parte hearing	Yes
• Motion to waive attendance at parent education class/attend parent education class on-line	Yes
• Motion to participate by telephone	Yes

The following motions may be allowed only with the assent of the other party/parties, or as a joint motion:

• Motion to continue
• Motion to approve QDRO

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| <ul style="list-style-type: none"> • Motion to amend complaint [if motion needed; M.R.Dom.Rel.P. 15 – pleading may be amended once without motion if no responsive pleading filed] |
| <ul style="list-style-type: none"> • Motion to file late answer/counterclaim |
| <ul style="list-style-type: none"> • Motion to withdraw as counsel |
| <ul style="list-style-type: none"> • Agreement for case management order |
| <ul style="list-style-type: none"> • Agreement for temporary orders (should be accompanied by a joint motion requesting that agreement be entered as an order without hearing) |

All other motions must be marked for hearing (except for motions which are handled administratively under Standing Order 2-99).

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